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ELECTION OF JUDGES OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

Memorandum by the Secretary-General

I. INTRODUCTION

1. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, and to that end to adopt the statute of the International Criminal Tribunal for Rwanda annexed thereto.

2. At its 97th plenary meeting, on 28 February 1995, the General Assembly decided, on the proposal of the Secretary-General (A/49/241), to include in the agenda of its forty-ninth session an item entitled "Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994" (item 164).

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* Reissued for technical reasons.

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3. Pursuant to article 12, paragraph 2, of the statute of the International Tribunal for Rwanda, the members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the former Yugoslavia"), shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

4. Pursuant to article 12, subparagraph 3 (a), of the statute, the Legal Counsel, on behalf of the Secretary-General, by circular letter of 7 March 1995, invited States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for judges of the trial chambers of the International Tribunal for Rwanda. In accordance with article 12, subparagraph 3 (b) of the statute, each State was invited to nominate, within 30 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality and neither of whom were to be of the same nationality as any judge on the Appeals Chamber.

5. The Legal Counsel also referred to the fact that, pursuant to paragraph 5 of article 12, the judges of the International Tribunal for Rwanda shall be elected for a term of four years. In this connection, the Legal Counsel stated that the judges of the International Tribunal for Rwanda were to serve on a full-time basis and thus could not engage in any other occupation of a professional nature during their tenure. Moreover, the judges of the International Tribunal would take office, upon two months' notice, shortly before the commencement of trial proceedings. He stated that they might, however, be convened beforehand for an extraordinary session for the purpose of adopting the rules of procedure and evidence of the International Tribunal for Rwanda.

6. The nominations received were forwarded by the Secretary-General to the President of the Security Council in accordance with article 12, subparagraph 3 (c), of the statute of the International Tribunal for Rwanda. At its 3524th meeting, on 24 April 1995, the Council, in accordance with that article, established a list of 12 candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world. The list was adopted in resolution 989 (1995) and was formally conveyed to the President of the General Assembly by letter dated 24 April 1995 from the President of the Security Council (A/49/889).

7. The list of candidates for judges and the procedure for the election of the judges of the trial chambers of the International Tribunal for Rwanda are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/49/894).

II. LIST OF CANDIDATES FOR JUDGES OF THE TRIAL CHAMBERS OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

8. The list of candidates for judges of the trial chambers of the International Tribunal for Rwanda is as follows:

Mr. Lennart ASPEGREN (Sweden)
Mr. Kevin HAUGH (Ireland)
Mr. Laity KAMA (Senegal)
Mr. T. H. KHAN (Bangladesh)
Mr. Wamulungwe MAINGA (Zambia)
Mr. Yakov A. OSTROVSKY (Russian Federation)
Ms. Navanethem PILLAY (South Africa)
Mr. Edilbert RAZAFINDRALAMBO (Madagascar)
Mr. William H. SEKULE (United Republic of Tanzania)
Ms. Anne Marie STOLTZ (Norway)
Mr. Jiri TOMAN (Czech Republic/Switzerland)
Mr. Lloyd G. WILLIAMS (Jamaica/Saint Kitts and Nevis)

III. PROCEDURE FOR THE ELECTION OF JUDGES

9. The election of judges will take place in accordance with the following provisions:

(a) Article 12 of the statute of the International Tribunal for Rwanda;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the trial chambers of the International Tribunal for Rwanda, the Secretary-General suggests that similar election procedures should be followed in the General Assembly, as was the case with the election of judges of the International Tribunal for the former Yugoslavia. For this reason, it is suggested that rule 151 of the rules of procedure of the General Assembly should apply to the election of judges of the trial chambers of the International Tribunal for Rwanda.

10. In accordance with article 12, subparagraph 3 (a), of the statute of the International Tribunal for Rwanda, the Holy See and Switzerland, the two non-member States maintaining permanent observer missions at United Nations Headquarters that were invited to nominate judges for the trial chambers of the International Tribunal for Rwanda, will participate in the election in the same manner as the States Members of the United Nations.

11. On the date of the election, the General Assembly will elect six judges from the list of candidates submitted to it by the Security Council. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers.

12. The candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters will be declared elected (art. 12, subpara. 2 (d), of the statute).

13. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote. The electors, for this purpose, are all the Member States and the two non-member States mentioned in paragraph 10 above. Accordingly, 94 votes

constitute an absolute majority in the General Assembly for the purpose of electing judges of the trial chambers of the International Tribunal for Rwanda.

14. If fewer than the required number of candidates obtain the absolute majority in the first ballot, a second ballot will be held and balloting will continue at the same meeting until the required number of candidates obtain an absolute majority. Following the practice in the election of judges of the International Court of Justice, the Secretary-General suggests that subsequent balloting shall be unrestricted. Accordingly, each elector may vote for six candidates in the first ballot and, in any subsequent ballots, for six minus the number of candidates who have already obtained absolute majorities.

15. If more than the required number of candidates obtain the absolute majority of votes in the first ballot, a second ballot will be held on all candidates and balloting will continue at the same meeting until the required number of candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, in the first ballot and in any subsequent ballot, for six candidates.

16. When six candidates have obtained the required majority, the President of the General Assembly will declare the candidates elected.